

DEPARTMENT OF STATE REVENUE

02960070.LOF

**LETTER OF FINDINGS NUMBER 96-0070 INC.
INCOME TAX**

FOR THE PERIODS: Feb. 28, 1991, 1992, 1993, & 1994

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax. - Discounts Earned.

Authority: IC 6-2.1-1-2(c)(11), 45 IAC 1-1-33

The taxpayer protests the inclusion of Discounts Earned in Gross Income.

II. Gross Income Tax. - MG Income.

Authority: 45 IAC 1-1-97, 45 IAC 1-1-15

The taxpayer protests the reclassification of MG income from the low rate to the high rate.

III. Gross Income Tax. - Delivery Charges.

Authority: 45 IAC 2.2-4-3, 45 IAC 1-1-15

The taxpayer protests the reclassification of delivery income from the low rate to the high rate.

IV. Gross Income Tax. - Carpet Installation Income.

Authority: 45 IAC 1-1-15, 45 IAC 1-1-97

The taxpayer protests the reclassification of carpet installation income from the low rate to the high rate.

V. Negligence Penalty. - Imposition.

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer and its subsidiaries is a regular C corporation engaged primarily in the retail sale of home furnishings. In Indiana, taxpayer has 19 retail locations most of which have small warehouses attached to the retail facility. Most of the Indiana locations handle only furniture and floor coverings.

I. Gross Income Tax. - Discounts Earned.

DISCUSSION

The taxpayer earns cash discounts taken on purchases from their vendors.

Indiana Code section 6-2.1-1-2(c)(11) states:

"gross income does not include... cash discounts allowed and taken on sale."

Accordingly, the cash discounts are not included in the gross income calculation.

FINDING

The protest is sustained. Discounts Earned are not subject to gross income tax.

II. Gross Income Tax – MG Income.

DISCUSSION

The taxpayer applies MG fabric upholstery protector to furniture before the furniture is delivered to the customer.

Indiana Regulation 45 IAC 1-1-97 states:

"In the sale of tangible personal property, service charges which occur prior to the point in time when the property is delivered to the purchaser is taxable at the lower rate."

Additionally, Indiana Regulation 45 IAC 1-1-15 states:

"Services rendered before delivery, i.e. charges for preparation, fabrication, alteration, modification, finishing, completion, delivery charges, etc. Such charges are considered a part of the sales price and are taxed at the same rate as the sale itself."

According to both regulations, the application of MG fabric protector is taxable at the low rate.

FINDING

The taxpayer's protest is sustained. The MG is applied prior to delivery and is taxable at the low rate.

III. Gross Income Tax. - Delivery Charges.

DISCUSSION

The taxpayer delivers the product in taxpayer owned trucks.

Indiana Regulation 45 IAC 2.2-4-3(a) states:

"Separately stated delivery charges are considered part of selling at retail and subject to sales and use tax if

the delivery is made by or on behalf of the seller of property not owned by the buyer." As the delivery is in taxpayer owned trucks, the delivery is subject to sales tax. According to 45 IAC 1-1-15, as the delivery is considered part of the sale, the delivery is taxed at the same rate as the sale which is the lower rate of gross income tax.

FINDING

The taxpayer's protest is sustained. Delivery charges are taxable at the lower rate of gross income tax.

IV. Gross Income Tax. - Carpet Installation Income.

DISCUSSION

The carpet installation charge is part of the sales contract. As such, the sale is not complete (i.e. delivery) until the installation is completed. According to 45 IAC 1-1-15, service charges which occur prior to delivery are taxable at the same rate as the sale. As such, the carpet installation charges are taxable at the same rate as the sale which is the low rate of gross income tax.

FINDING

The taxpayer's protest is sustained. The carpet installation occurs prior to delivery and is taxable at the lower rate.

V. Negligence Penalty. - Imposition.

DISCUSSION

The taxpayer had employee turnover and was unable to complete tax returns correctly. According to 45 IAC 15-11-2, this is taxpayer carelessness and constitutes negligence.

FINDING

The taxpayer's protest is denied. The taxpayer was careless and carelessness is negligence.